Drug Testing Updates
Kelsey Unland
Fortier Loss Control Consultants & Fortier Substance Abuse Testing

Agenda
- Drug Testing Trends
- Prescription Medicine
- Recommended Drug Testing Panel and Reasons for Testing
- TN Drug Free WorkPlace Program Updates
- U.S. Department of Health and Human Services/Department of Transportation Updates
- OSHA Final Rule: Post Accident Testing
- Reasonable Suspicion Testing

Drug Positivity Highest Rate in 12 Years
- Cocaine positivity increased 12% in 2016.
- Marijuana positivity increased nearly 10% in 2016 in federally mandated, safety-sensitive workplaces.
- Increases in CO and WA double the national average (4% national, 11% CO, and 9% WA).
- Methamphetamine positive remains high.
- Heroin detection plateaus in general U.S. workforce, while prescription opiate detection declines.

Marijuana Legalization
- Light Green – Marijuana legalized for recreational use.
- Dark Green – Medical marijuana broadly legalized.
- Gray – No broad laws legalizing marijuana.

The Impact of Marijuana Legalization in Colorado
- Released The Legalization of Marijuana in Colorado The Impact, Volume 3 on 9/15/2015. Highlights for 2014…
  - 32% increase in marijuana-related traffic deaths in just one year from 2013.
  - Toxicology reports with positive marijuana results of active THC for primarily driving under the influence have increased 45%.
  - Colorado youth usage (ages 12 – 17) ranks 50% higher than the national average.
  - 29% increase in the number of marijuana-related emergency room visits.
  - 38% increase in the number of marijuana-related hospitalizations.
  - Seizures of illegal Colorado marijuana increased another 34%.

Prescription Medicine
- Nothing in your policy should preclude the appropriate use of legally prescribed medications.
- However, if the use of prescription drugs leads to impairing effects that could adversely affect your ability to safely perform your job functions you must notify a supervisor.
- Regarding this notice, employees are not to disclose the name of the medication nor the reason for its use to their supervisor.
- A fitness-for-duty evaluation will be conducted. The physician and MRO will make a recommendation.
Prescription Medicine

If employee has safety concern due to prescription medicine...
- Schedule fit-for-duty exam.
- Follow physician’s recommendation.

If supervisor suspects drug use...
- Conduct reasonable suspicion test.

If result is negative...
- You may request fit-for-duty exam or...
- Discipline based on observed work performance.

Drug Testing Panel

Our company reserves the right to test for any illegal substance.

- Cannabinoids
- Cocaine
- Amphetamine/Meth
- Opiates
- Phencyclidine (PCP)
- Benzodiazepines (Valium, Xanax)
- Barbiturates (Phenobarbital)
- Propoxyphene (Darvocet, Darvocet)
- Methadone
- Synthetic Opiates (Hydrocodone, Oxycodone)
- Synthetic Marijuana
- Synthetic Stimulants (Bath Salts, Mephedrone)

Reasons for Testing

- Pre-Employment
- Post Accident
- Reasonable Suspicion
- Follow-Up
- Routine Fitness For Duty
- Random (Required by DOT)

US Dept. Health & Human Services (HHS) & DOT Updates

- Effective October 1, 2017 for US Dept. of HHS
- MDA will no longer be tested under the standard panel.
- Opiates, oxymorphone, hydrocodone, and hydromorphone will be added to the standard panel.
- New Federal CCF has been approved by HHS, but DOT-regulated employees are to continue using the “old” CCF until further notice per DOT’s ODAPC.
- 2013 FMCSA Clearinghouse – DOT hopes to have database website active by January 2020 and will allow 3 years for companies to full comply.

OSHA Final Rule Injury and Illness Reporting

- Final rule does prohibit employers from using drug testing for the threat of drug testing as a form of adverse action against employees who report injuries or illnesses.
- Post-incident testing should be limited to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use.
- It would likely not be reasonable to drug test an employee who reports a bee sting, a repetitive strain injury, or an injury caused by a lack of machine guarding or a machine or tool malfunction.
- Employers need NOT specifically suspect drug use, but there should be reasonable possibility that drug use could be a contributing factor.
Post Accident Testing Criteria

- DOT/FMCSA
  - Fatality OR
  - Driver Citation and Vehicle Towed OR
  - Driver Citation and Medical Assistance Required

- To qualify as DOT Accident, driver must be operating a DOT vehicle (26,001+ lbs, carrying 16+ passengers, or placarded due to transportation of hazardous material).

- For criteria met, drug screen required within 32 hours and alcohol test required within 2 hours (up to 8 hours, after 2 hours must document why test has not yet been conducted).

- If criteria is met, drug screen required within 32 hours and alcohol test within 2 hours.

- Reasonable Suspicion Testing
  1. Observe
  2. Confirm (Draft Documentation)
  3. Confront
  4. Test
  5. Transport (Formal Documentation)

- TN DFWP
  - Employee taken to medical facility for treatment.
  - For non-emergency injuries reported after the fact, testing must be done when injury is entered into OSHA 300 log.
  - Best practice is to follow DOT/FMCSA rule and conduct drug screen within 32 hours and alcohol test within 2 hours.

- Other
  - Is there a reasonable possibility that drug use by the reporting employee was a contributing factor to the reporting injury or illness?
  - Employers need not specifically suspect drug use before testing, but employee must have been at fault and demonstrated poor judgment that could have been caused by impairment.

- Best practice is to follow DOT/FMCSA rule and conduct drug screen within 32 hours and alcohol test within 2 hours.

Thank you for your attention!